
Chapter 11 PAYMENT REDUCTIONS

11.1.0 HOURLY PAYMENT REDUCTIONS

W-2 participants must participate in all required work training hours and activities outlined in the Employability Plan.

Payments for CSJ and W-2 T participants who fail to participate in assigned work training activities are reduced by \$5.15 per hour for hours missed without good cause. In determining a reduction, the W-2 agency must verify nonparticipation. In addition to applying the hourly reduction, the W-2 agency must work with the participant to develop the skills needed to manage issues that arise so the participant does not continue to miss activities without good cause. This includes encouraging the participant to call the FEP as soon as they are aware they will miss planned work training hours or activities. Participants who do not participate at all, without good cause, may receive a strike. (See 11.2.0.)

Participants placed in Trial Jobs will not be subject to hourly reductions because Trial Job participants are paid wages directly by the employer. The Trial Job employer and participant are encouraged to work together to allow for planned absences. However, unplanned and unexcused absences by the participant will be reflected by a decrease in wages, regardless of W-2 good cause criteria.

Custodial Parent of an Infant (CMC) payments must not be reduced. See W-2 Manual, Chapters 7 and 10 and the CARES Guide for more information on processing CMC payments. In addition, the FEP must take special care when moving participants between W-2 paid placements and case management placements so that payments are not reduced incorrectly. See 10.2.4 for more information.

11.2.0 THREE STRIKES FOR EMPLOYMENT POSITIONS

A participant who fails or refuses, without good cause (see Good Cause for Unplanned Absences), to participate in a W-2 employment position may accumulate strikes. A participant who fails or refuses to participate three times in any W-2 employment position activity will be ineligible to participate in that employment position for life. A participant who is ineligible for a particular employment position may be eligible to participate in another employment position in which the participant has not failed or refused to participate three times, if appropriate and approved by the FEP.

A participant refuses to participate in a W-2 employment position if the participant does any of the following, without good cause:

- Refuses to participate in a W-2 employment position (demonstrated by actions, verbally or in writing);
- Fails to appear for an interview with a prospective employer; if the participant is in W-2 T, fails to appear for an assigned activity;
- Voluntarily leaves appropriate employment or training;
- Refuses to accept an offer of bona fide employment; and
- Loses employment or placement as a result of being discharged for cause.

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A participant does not accumulate strikes each time an hourly reduction is applied. FEPs should use strikes as an employer would use formal suspensions versus a less severe form of discipline such as verbal reprimand or letter of instruction where clarification of policy would suffice. Strikes are a more severe indicator of nonparticipation than an hourly reduction based on the above situations. Before applying a strike, the FEP must review the participant's actions to ensure that good cause did not exist. If the participant failed to participate due to a barrier not originally identified, such as a drug or alcohol addiction, the FEP should apply an hourly reduction and work with the participant to address that barrier instead of applying a strike. The reason for the strike must be documented in the case notes. A strike should be seen as a serious step. In unusual situations, strikes may be forgiven if the W-2 agency identifies good cause for nonparticipation after the 45 day fact finding deadline has past. (See 19.2.0.)

11.2.1 Two-Parent Households

The second parent in a W-2 group who is assigned participation activities because they are receiving federally funded child care may accumulate a strike if they refuse to participate in assigned activities. (See 11.2.0)

Strikes earned by each parent in a W-2 group are not cumulative; therefore strikes earned by each parent must be tracked independently of each other. Both the parent in a W-2 employment position and the second parent who is assigned participation activities may each accumulate 3 strikes. Once either parent accumulates 3 strikes for nonparticipation, the parent in a W-2 employment position is ineligible to participate in that employment position for life. (See 2.2.5.4)

Example: Sharon is a CSJ participant. Her husband John works part-time at the mall. In addition, John is assigned to four hours per week of work experience so that he can increase his skills and find full-time work. The family is receiving federally funded child care for their two children. John has had a poor history of participation and has earned his third strike. Therefore, Sharon is no longer eligible to participate in her CSJ placement. If John were to leave the W-2 group, Sharon may then be eligible once again for a CSJ. However, John remains ineligible for a CSJ regardless of leaving the group and if he enters another W-2 group, any adult in the new W-2 group would be ineligible for a CSJ placement.

11.3.0 GOOD CAUSE

The FEP shall determine if a W-2 participant had good cause for not complying with the W-2 participation requirements. In making such a determination, the FEP may require that the W-2 participant provide written documentation that good cause existed. No good cause shall exist unless the participant provides timely notification, as determined by the W-2 agency, of the good cause reason to the FEP. Good cause for failing to comply with the W-2 participation requirements shall be any of the following circumstances:

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1. A required court appearance which must include a required court appearance for a victim of domestic abuse.
2. Child care was necessary for the W-2 participant to participate or accept employment, and child care was unavailable and the W-2 agency was unable to provide or refer for alternate child care arrangements. (See 11.3.1).
3. Other circumstances beyond the control of the participant, but only as determined by the FEP.

(For good cause criteria for waiving cooperation with child support, see 16.3.1.1.)

11.3.1 Child Care And W-2 Participation

A single parent placed in a CSJ or W-2 T position cannot be assigned work activities during a period of time s/he is unable to obtain child care for a child under the age of thirteen. However, the participant may be assigned to other activities which may be performed in the home. For example, a participant who does not have child care available at the time the W-2 placement is determined may be assigned to contact a number of child care resources. FEPs must track these participants closely to ensure they are placed in work activities as soon as a child care provider has been located. Participants must be told that they will be subject to the W-2 time limits if they are assigned activities to assist in locating child care. (See 2.3.0) If child care is only available to the participant during specific hours of the day or days of the week, the W-2 agency must make every effort to assign work activities during those hours. (For a discussion on caring for incapacitated W-2 group members, including children over age 13, see 7.4.2).

A Trial Job participant may not have a strike imposed for missing hours of work if the participant was unable to obtain child care for a child under the age of thirteen.

11.3.1.1 *Determining Availability of Child Care*

Although child care arrangements are ultimately the responsibility of the parent, a W-2 applicant/participant may be unfamiliar with the task of locating a child care provider. Guidance and/or referrals from the W-2 agency may reduce the time necessary to locate a provider.

In order to determine if child care is available, a W-2 staff person must discuss child care with each participant at the time of the initial assessment and during the review of the W-2 Participation Agreement.

The W-2 staff person must:

1. Explain to participants their responsibility to obtain any needed child care for the hours of participation in W-2.
2. Determine if informal child care, or formal child care within a reasonable distance from the participant's home, is available. Informal child care arrangements may be discussed, but a participant cannot be required to use an informal child care arrangement. If the other parent is in the home, able and available to care for the child, child care is not needed. (For further discussion on two-parent families and child care, see the Day Care Manual, Section 3.1.0)

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3. Provide information to the participant about eligibility for W-2 child care assistance and the requirement for the provider to, at a minimum, be provisionally certified to qualify for assistance. (See 15.4.0).
4. Discuss the availability of backup child care arrangements to ensure the participant is planning ahead for emergency situations when the regular provider is unable to care for the child(ren) or when the child is sick and cannot attend the regular child care program.
5. If the participant does not currently have child care available, refer the participant to the local Child Care Resource and Referral network (CCR&R) which is available to help all parents locate safe and affordable child care throughout the state, and other child care resources in the community. If the referrals do not result in the participant locating child care, the W-2 agency may require the participant to demonstrate an inability to obtain child care. (See 11.3.1.2)

For example, the W-2 agency may accept a statement from the CCR&R network noting the unavailability of formal child care. Or, if the participant states that child care is not obtainable due to difficulty in arranging transportation, the FEP may refer to bus schedules or the availability of other forms of transportation, and determine if reasonable distance criteria is met.

6. If available, offer the use of the W-2 agency on-site child care to the parent until an ongoing child care arrangement is found. A W-2 on-site child care provider must be regulated in order for the parent to leave the premises.

11.3.1.2

Demonstrating an Inability to Obtain Child Care

An inability to obtain child care must be based on the following reasons:

1. **Formal child care is not available within a reasonable distance from the parent's home or work site.** Formal child care means at least one licensed or certified child care facility with space available for the child for which there is no documentation that the facility would be harmful to the health or safety of the child. This includes a W-2 agency with certified or licensed on-site child care. Participants who place their children into any type of formal arrangement in order to work or participate in W-2 employment activities are eligible for W-2 child care assistance.

Reasonable distance means no more than 60 minutes travel time one-way, using available transportation, from the parent's home to the child care provider's location to the parent's work site. Travel time may be extended up to 90 minutes one-way if there is a good placement opportunity for the participant AND the participant is willing to enter into this arrangement.

and

2. **Informal child care by a relative or under other arrangements is unavailable or unsuitable.** Informal child care is defined as an arrangement in which the child care provider is neither licensed nor certified. (See 15.4.0)

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Participants who use this type of arrangement are not eligible for W-2 child care assistance. Informal child care arrangements may be used by any W-2 participant; however, a participant cannot be required to use informal child care.

If the participant fails to demonstrate an inability to obtain child care, s/he must resume W-2 work activities and face payment reductions, or possibly a strike, for nonparticipation.

An inability to obtain appropriate child care may be indicative of a shortage of child care providers in the community (including sick child care, evening and weekend care, culturally competent child care, and care for disabled children) and W-2 agency management should be alerted to the problem. Each W-2 Community Steering Committee is responsible for working with participants, employers, child care providers and the community to identify child care needs, improve access to child care and expand availability of child care.

11.3.2 Incarceration

Incarcerated W-2 participants who are unable to participate in work activities, retain care and control of their child(ren), or both for more than 30 consecutive calendar days are not eligible for W-2 benefits. Up to this 30-day limit, W-2 participants whose incarceration renders them temporarily unable to participate in work activities, retain care and control of their children, or both will remain eligible for W-2 benefits, provided they remain otherwise financially and non-financially eligible. The 30-day timeframe allows for short-term incarceration without having to disenroll and then re-enroll the participant which would disrupt the activities, payments and child care.

11.3.2.1 Good Cause/Payment For Incarcerated Participants

Although incarcerated W-2 participants may remain eligible to receive W-2 benefits, incarceration will generally *not* be considered good cause for not participating in required work activities. Hours of work activities missed because of incarceration will result in payment reductions in the same manner as any other hours missed without good cause, unless the W-2 agency finds extenuating circumstances behind the incarceration or determines that the incarceration resulted from a situation beyond the participant's control. The FEP must determine this on a case by case basis and document the reason in case comments.

Example: Amy, a W-2 participant, was arrested for unpaid fines from her drunk driving conviction. Amy stated she was unable to pay the fines. Amy served 20 days in jail because she was unable to pay the tickets. Amy's hours were sanctioned for the days she was unable to participate. Amy received payment for the days she was able to participate in her W-2 assigned activities.

Example: Ken was arrested on suspicion of drug possession. After the preliminary hearing, the charges were dropped and he was released. Ken served 14 days until the charges were dropped. Ken submitted a statement from the court to the FEP. The FEP gave him good cause for the hours because the charges were dropped.

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11.3.2.2 Huber Program

A judge may order an incarcerated W-2 participant into the Huber Program, allowing for limited release for work and, in some cases, performance of child care responsibilities. An incarcerated W-2 participant's Employability Plan may be adjusted to reflect the court-specified terms of that participant's Huber Program release and should be otherwise modified as needed to allow continued W-2 participation, provided the participant maintains care, custody and control of his/her child(ren).

Example: Elizabeth, a W-2 participant, is ordered into the Huber Program for 3 months. The judge indicated Elizabeth would be released during the day to care for her children and participate in specified work program activities. Elizabeth's mother is available to stay with the children at night. Elizabeth called her FEP explaining the changes in her family's situation. The FEP altered the EP to reflect the changes in circumstances. Elizabeth's updated EP includes GED classes for 4 hours a week at the Job Center and clerical work site activities at the Job Center for 8 hours a week where the participant can use the onsite child care.

Just as a W-2 participant may not be in violation of probation and parole orders, a W-2 participant released under the Huber Program must cooperate with jail staff and rules in order to remain eligible for W-2 benefits.

11.4.0 **FRAUD/INTENTIONAL PROGRAM VIOLATION**

W-2 agencies are responsible for timely referral of participants receiving payments under ss.49.141 through 49.161 for investigation when fraud is suspected. Fraud investigations may be conducted by the W-2 agency or a separate entity if under contract with DWD. Operational issues and guidelines for fraud investigation are located in the IM Manual, Section II, Part D. Under W-2, individuals may be found guilty of Intentional Program Violation (IPV) through an administrative hearing or a court.

Under W-2, the penalty for IPV is as follows: If a court finds or it is determined after an administrative hearing that an individual who is a member of a W-2 group applying for or receiving payments under ss.49.141 to 49.161, for the purpose of establishing or maintaining eligibility for those payments or for the purpose of increasing the value of those payments, has intentionally violated, on three separate occasions, any provisions within those statutory references or any rule promulgated under those sections, the W-2 agency may permanently deny W-2 payments to the individual. Payments include employment position payments, Job Access Loans, and/or child care payments. There is no "child-only" grant provision under W-2 for children of adults found guilty of IPV.

AFDC recipients who have been disqualified previously or currently for IPV receive a clean slate under W-2. Previous disqualifications do not carry over.

11.4.1 **Misrepresentation of Identity or Residence**

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A W-2 participant will be prohibited from participating in W-2 for 10 years if convicted in a federal or state court for any of the following reasons:

1. Knowingly and willfully making or causing to be made any false statement or representation of material fact in any application for benefits or payments with respect to his or her identity or place of residence for the purpose of receiving simultaneously from this state and at least one other state assistance funded by TANF.
2. Fraudulently misstating or misrepresenting his or her identity or place of residence for the purpose of receiving simultaneously from this state and at least one other state benefits under one of the following programs:
 - a. Medical Assistance;
 - b. food stamps; and
 - c. Supplemental Security Income.

The 10 year period will begin on the date of conviction. If the person who has been suspended from participating in W-2 for any of the above reasons is pardoned by the president of the United States for the conduct which caused the suspension, eligibility may be restored beginning on the first day of the first month after the pardon was granted.

This misrepresentation is an IPV and must be counted as such when determining permanent ineligibility for three occurrences of IPV.

11.5.0 LEARNFARE

For a discussion of Learnfare financial penalties, see 12.7.0.

11.6.0 NONCOOPERATION WITH CHILD SUPPORT

For a discussion of Child Support noncooperation, see 16.3.1.

11.7.0 DRUG FELONS

For W-2 purposes, the definition of a drug felon is an adult (over 18) who is convicted of a felony, which occurred after August 22, 1996 and within the last 5 years in state or federal court, involving the possession, use or distribution of a controlled substance. As a condition of continuing eligibility, a CSJ or W-2 T participant who reports that he or she has been convicted of a drug-related felony within the timeframe above must submit to a test for use of a controlled substance.

The cost of drug testing must be paid for by the local agency. Drug tests taken from another credible source may be used if taken within the last 30 days. If a previous

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drug test result is offered but is older than 30 days, require a new drug test. Examples of credible sources include, but are not limited to, probation officers, employers, FEPs, etc.

11.7.1 Guidelines For W-2 Applicants Or Ongoing Participants

There are three likely scenarios for W-2 applicants or participants who meet the definition of a drug felon:

1. The applicant or participant will be considered ineligible if he/she **refuses** to take a drug test. The individual can gain eligibility as long as he/she agrees to take a drug test.
2. The applicant or participant will be eligible for a reduced W-2 payment if he/she takes a drug test, and test result is positive.
3. The applicant or participant will be eligible for full W-2 payment if he/she takes a drug test, and the test result is negative.

If an applicant has agreed to a drug test, he/she is considered eligible for a full W-2 payment while the worker is waiting for the test results. If the test result is positive, then the next possible payment month is sanctioned. The pre-sanction payment is to be reduced by not more than 15% for no fewer than 12 months, or for the participant's remaining period of participation in a CSJ or W-2 T, if less than 12 months. Within these parameters, the sanction period and amount are set at the discretion of the worker. The number of months of the sanction period will be consecutive calendar months that continue irrespective of whether an individual moves between placements, moves on and off W-2, or receives a payment.

Example 1: Scott applies for W-2 and reports a drug felony conviction on March 3, 1999. As he is being placed in a W-2 T, he is required to take a drug test to meet conditions of eligibility. Scott agrees to take the drug test and the results are positive. The worker applies a 10% reduction for 12 months to Scott's W-2 payment starting in the next possible payment month.

Example 2: Janet applies for W-2 on September 15, 2001 and reports a drug felony conviction. The conviction occurred on August 29, 1996. There would be no sanction applied to her W-2 payment since the conviction did not occur within 5 years of the W-2 application date.

If a participant is moving between a CSJ and W-2 T placement, the sanction period does not stop or start over with a different placement but continues. If a participant is moving from a CSJ or W-2 T to a CMC placement, the payment reduction would stop during the CMC placement period but months would continue to be counted towards the sanction period. W-2 payment reduction resumes at the end of the CMC placement if the 12 month sanction period hasn't ended while the participant is in the CMC placement.

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Example: Holly applied for W-2 and received a drug felon sanction for 12 months beginning in January. She has been participating in a CSJ placement with a drug felon payment reduction for 3 months (from January through March). She moves into a CMC slot for months April, May and June. During the CMC placement Holly receives a full W-2 payment. However by the end of June, 6 months of the sanction period will have lapsed. When she moves back into a CSJ placement in July, the payment reduction will resume until December at which point the sanction period ends.

11.7.2 Regaining Full W-2 Payment

The participant will be required to take another drug test at the end of the sanction period to determine whether he/she is eligible for a full W-2 payment. If, at the end of the sanction period, the individual submits to another drug test and the results are negative, the W-2 agency shall discontinue the drug felon reduction. If, at the end of the sanction period, the individual submits to another drug test and the results are positive, his or her pre-sanction payment will continue to be reduced by not more than 15% for no fewer than 12 months, or for the participant's remaining period of participation in a CSJ or W-2 T, if less than 12 months. All subsequent payment reductions and drug test results will be treated in the same manner.

The W-2 agency may require an individual who has a positive drug test to participate in a drug abuse evaluation, assessment and treatment program to meet his or her CSJ or W-2 T participation requirements.

Trial Job and Unsubsidized Employment participants are not subject to drug felon penalties.

11.7.3 Applicability of Drug Tests for W-2 and Food Stamps (FS)

The time frame that a drug test is valid for the W-2 and food stamp programs is **30 days**. Two basic rules apply on how to regard the applicability of test results from one program to the other program:

1. If an individual has applied for both programs within 30 days of each other a **negative test result** (a passed test) can be used in either program's application.
2. If an individual has applied for both programs within 30 days of each other a **positive test result** (a failed test) cannot be applied across programs. The individual will be able to re-test when applying for the second program. If the first test is positive and the second test is negative this will not make him/her eligible or remove a sanction on the first program. It will only affect eligibility for the application of the second program. The previous sanction will remain in place.

Example: Liz applies for W-2 on January 5 and reports a drug felony conviction. She agrees to take the drug test scheduled for January 9 as a condition of her placement in a CSJ placement. The test results come back negative so no sanction is applied to her W-2 payment. On January 23 Liz applies for the Food Stamp Program. The worker looks on CARES screen ANDF and sees that the

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drug test has been taken within the last 30 days and it is a negative test result.
The worker can accept these results and process the application for FS.